

PATENT APPLICATION

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of

Docket No: Q86739

Pascal BRUNA

Appln. No.: 10/532,961

Group Art Unit: 3771

Confirmation No.: 9115

Examiner: Kristen Clarette MATTER

Filed: April 27, 2005

For: FLUID DISPENSER DEVICE WITH A DOSE INDICATOR

REPLY BRIEF PURSUANT TO 37 C.F.R. § 41.41

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with the provisions of 37 C.F.R. § 41.41, Appellant respectfully submits this Reply Brief in response to the Examiner's Answer dated December 2, 2009. Entry of this Reply Brief is respectfully requested.

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RELATED APPEALS AND INTERFERENCES

Since the Appeal Brief was filed on July 21, 2009, in the present application, an Appeal Brief was filed in the co-pending Application No. 10/532,073, on October 22, 2009. The co-pending Application has the same inventor and assignee as the present application. The Examiner has *provisionally* rejected claims 1-3 and 6-20 of the present application on the ground of nonstatutory obviousness-type double patenting over claims 1-8 of the co-pending Application. Applicant, however, is deferring to address this provisional rejection and is not making any admission to the validity of this provisional rejection by listing the appeal in co-pending Application No. 10/532,073 as a related appeal.

REPLY BRIEF UNDER 37 C.F.R. § 41.41
U.S. Appl. No.: 10/532,961

Atty. Docket No.: Q86739

STATUS OF CLAIMS

The status of the claims is as follows: claims 1-3 and 6-22 are pending. Claims 1-3 and 6-22 are rejected and claims 4 and 5 have been canceled. The rejections of claims 1-3 and 6-22 are being appealed.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The issues on appeal are summarized as follows:

1. Claims 1-3 and 6-22 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Walker et al. (US 5,564,414) in view of Barberi et al. (US 6,327,017) and Liou (US 5,895,159).

ARGUMENT

In this Reply Brief, Appellants address below certain points raised in the Examiner's Answer as mailed on December 2, 2009.

1. Whether claims 1-3 and 6-22 are properly rejected under 35 U.S.C. § 103(a) as being unpatentable over Walker et al. (US 5,564,414) in view of Barberi et al. (US 6,327,017) and Liou (US 5,895,159).

The Examiner only relies on Liou for disclosing "a current producer (6) that produces an instantaneous current upon a pressing bar (31) striking an internal flint (column 2, lines 47-53) in order to avoid the use of an external power source (column 1, lines 45-55)." (*See Answer*, page 5, lines 1-9.) The Examiner further states that "Liou then teaches in column 1, lines 45-50 that one way to replace conventional electrical wire power sources (which are well known equivalents to batteries) is to use a striking bar/flint combination [i.e. current producer 6] to produce an instantaneous electrical current." (*Answer*, page 8, lines 12-14.) The Examiner then reaches the conclusion that the current producer 6 is "well known" and can be substituted for a battery supply. (*Answer*, page 9, lines 1-4.) The Examiner's characterization of Liou is in error.

Nothing in Liou, indicates that the current producer 6 is suitable for replacing, or is a well known substitute for, a power supply such as a battery. One of the portions of Liou cited by the Examiner states that "[a] primary object of the present invention is to provide a heat-melting glue gun which uses burning gas instead of electric resistance to produce heat for melting the glue material in the gun." (Liou, co. 1, lines 45-50, emphasis added.) Thus, in Liou, the burning gas

(and not the current producer 60 as alleged by the Examiner) is used to replace an electric resistance heater in the glue gun. The current producer 60 only provides a spark that ignites the gas. (*See* Liou, col. 2, lines 47-60.) Since the current producer 60 in Liou is only used to ignite a gas, nothing in Liou indicates that the current producer would be suitable to replace a power sourced such as batteries or that it is “well known” to make such a substitution. Further nothing in Liou would indicate that the current producer 60 would be suitable for providing power for the LCD displays in Walker or Barberi. Therefore, there would be no rational reason for one of ordinary skill to combine current producer 60 in Liou with Barberi or Walker.

The Examiner also states that “[t]he fact that Liou uses the current for ignition is irrelevant.” (Answer, page 8, line 19.) Applicants note that Liou can only be interpreted for what it would reasonably convey to one of ordinary skill, and the fact that Liou uses the current producer to ignite a gas, without any additional uses, would indicate to one of ordinary skill that the current producer is only suitable for igniting a gas or performing some ignition-related function. Thus, the fact that Liou uses the current producer 60 for ignition is entirely relevant when considering whether it would have been obvious to combine the current producer 60 with another device.

Moreover, the glue gun in Liou and the device in Walker are operated in completely different manners, and one of ordinary skill in the art of the present application would not have considered combining Liou with Walker.

Walker discloses a metered dose inhaler, which counts the dispensing of a dose during actuation of the device, said counting being provided by an electronic circuit that is closed during said actuation. In Walker, there is no separate striking or force-actuation that is needed to provide said circuit closing.

The current producer 60 in Liou, however, is an individual component that is operated separately from the glue gun. (*See* Liou, FIG. 1, showing the pressing bar 31 for striking the flint of the current producer 60 being separate from the glue stick feeding means 50.) The current producer 60 in Liou is actuated separately from the glue gun 50, and requires a strike or force-actuation to produce a spark. (*See* Liou, col. 2, lines 47-60.) One skilled in the art starting with the device disclosed in Walker, would not have sought to improve the metered dose inhaler in Walker with the glue gun disclosed in Liou.

For at least the reasons stated here and in Appellant's Appeal Brief, the Examiner's rejection under 35 U.S.C. § 103 is improper and should be reversed.

2. Provisional Rejections

At page 3 of the Examiner's Answer, the Examiner states that the provisional rejection of claims 1-3 and 6-20 on the grounds of non-statutory obviousness-type double patenting over claims 1-8 of copending Application No. 10/532,073 has not been withdrawn and the claims of the present application have not been canceled. Additionally, the Examiner requests that the Board affirm the provisional non-statutory obviousness-type double patenting rejection. (*See* Examiner's Answer, page 11.)

Neither the claims of the present application nor the claims of co-pending Application No. 10/532,073 have issued. Accordingly, this rejection remains *provisional*, and not actual. Since the double patenting rejection is *provisional*, Applicant defers addressing the merits of the provisional rejection until one of the cited pending Applications issues in accordance with MPEP § 804(I)(B). By not addressing the provisional rejections on the ground of non-statutory obviousness-type double patenting, Applicant makes no assertion regarding the merits of these rejections.

CONCLUSION

For the above reasons as well as the reasons set forth in Appeal Brief, Appellant respectfully requests that the Board reverse the Examiner's rejections of all claims on Appeal. An early and favorable decision on the merits of this Appeal is respectfully requested.

Respectfully submitted,



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